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SUPREME COURT, U.S.

NO. 82-5179

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM
1982

DEV KINNEY d/b/a/ MEDIA GRAPHICS
Appellant, Defendant, CounterPlaintiff

V.

KOTLER EXTERMINATING COMPANY, INC.
Appellee, Plaintiff, CounterDefendant

APPELLANT'S ANSWER TO THE MOTION TO DISMISS APPEAL FROM SUPREME COURT OF TENNESSEE

JOHN D. KINNEY, pro se
MEDIA GRAPHICS
717 SPRING STREET
MEMPHIS, TN 38112

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ANSWER TO
APPELLEE"S MOTION TO DISMISS APPEAL
FROM THE SUPREME COURT OF TENNESSEE

Appellant, Dev Kinney d/b/a/ Media Graphics, asks the Honorable Judges of the United States Supreme Court to hear this answer so that Appellee's motion to dismiss may be denied. Appellee Kotler Exterminating has four objections, each of which will be repeated and answered in turn.

1. The appeal does not present a substantial federal question.

The federal question of fraud against contract in violation of section 2-201 of the Uniform Commercial Code was put to the fifteenth circuit court in paragraph 10 of Appellant Kinney's Answer to Kotler Exterminating Company's original Complaint and paragraph 4 of the Counterclaim:

> (Answer, trial level)
> 10. Defendant...alleges that plaintiff did not wish for defendant to meet the time schedule of the contract.
>
> (Counterclaim, trial level)
> 4. That plaintiff did willfully and with malice aforethought attempt to hender the counterclaimant in the specific performance of Contract B...

Paragraph 3 of the Counterclaim and paragraph 3 of the original Answer by Kinney indicate that two contracts were involved in the negotiations:

> (Counterclaim, trial level)
> 3. That, as previously alleged in Answer... the Contract A...makes counterclaimant sole agent for the production of all material resulting from preliminary work done under the terms of Contract A, and that Contract B...was effected from said preliminary work and concepts.

The fact that Kinney was unable to find counsel in this matter and that when he did find counsel, counsel was unable or unwilling to try the case or represent Kinney on the merits

was put to the Tennessee Court of Appeals and the Tennessee Supreme Court. This fact is also stated in the questions presented for review by implication. In Powell v. Alabama, 287 U.S. 45 pp 67, 68, it is shown that justice is denied when "man in truth, though not in form, is denied counsel."

2. The Federal Question sought to be reviewed was neither timely nor properly raised, nor expressly passed on by the courts of Tennessee.

Articles V and XIV of the U.S. Constitution are expressed in specific terms in the four questions presented for review. Where there is a contract, real property is involved, whether tangible or intangible. The value of this property was determined to be over $7,200.00 plus all rights to additional production, which could mean many thousands more. This value is specifically stated in contracts A and B.

The fact that Kinney's original answer had to be filed pro se indicates that he was denied counsel until time of trial. The Appeal Courts of Tennessee were aware that counsel withdrew immediately after trial. The Appeal courts of Tennessee were made aware by appellant Kinney that a discrepancy in the events of the trial, counsel's motion for a new trial and the transcribed record existed and that Appellant Kinney's civil rights under the constitution were violated.

The U.S. Government, as Parens Patria, has the obligation to protect the civil rights of all citizens, whether those rights are violated by a single party or a subordinate government. It is appellant Kinney's contention before this Court that Rule 11(b) of the Tennessee Court of Appeals allows the Courts of Tennessee to violate a citizens right to appeal by denying application and refusing to record the facts for review by the Supreme Court of the United States.

3. The judgment of the Court of Appeals, Western Section at Jackson and the Supreme Court of the State of Tennessee rests on an adequate non-federal basis.

Appellant Kinney seeks to have the Supreme Court of this land review whether he was in truth denied counsel, whether the jury at trial was presented all the facts in a manner that would lead to a just verdict, and whether it should have been apparent to the Supreme Courts of Tennessee that a just trial was not afforded Appellant Kinney under his rights according to Articles V and XIV of the Amendments to the U.S. Constitution, and finally, if in fact Appellants rights were denied, does the Supreme Court of Tennessee have the right to deny Application to Appeal when Kinney is not and has not been truly and justly represented before the law.

4. The Appeal in Forma Pauperis is frivolous or malicious, persuant to 28 U.S.C. 1915(d).

Appellant denies this allegation, and considers it as slandor on the part of Appellee.

CONCLUSION

Now that all objections to this cause by Appellee Kotler Exterminating Company have been answered to the best of my ability acting pro se for myself, Dev Kinney, the sole owner of Media Graphics, and a law abiding and tax contributing member of Tennessee for over 20 years, Appellant Kinney asks the Court to deny the motion to dismiss and give full hearing to this case.

Respectfully submitted this
29th day of September, 1982.

John D. Kinney

John D. Kinney, pro se
717 Spring St.
Memphis, TN 38112

CERTIFICATE OF SERVICE

The following is to certify that 3 copies of this answer to Appellee's motion to dismiss appeal have been mailed to counsel of record David E. Caywood, 2800 Sterick Building, Memphis, Tennessee 38103 on this the 29th day of September.

John D. Kinney, pro se
Dev Kinney/Media Graphi

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V.

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Appellee, Plaintiff, CounterDefendant

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MOTION TO DISMISS APPEAL FROM SUPREME
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